

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF THE)	
BREATHITT COUNTY WATER DISTRICT FOR)	
A CERTIFICATE OF PUBLIC CONVENIENCE)	CASE NO.
AND NECESSITY TO CONSTRUCT A WATER)	2021-00400
SYSTEM IMPROVEMENTS PROJECT)	
PURSUANT TO THE PROVISIONS OF KRS)	
278.020 AND 807 KAR 5:001)	

ORDER

On November 3, 2021, Breathitt County Water District (Breathitt District) filed an electronic application, pursuant to KRS 278.020 for a Certificate of Public Convenience and Necessity (CPCN) for water line extensions in Breathitt County, Kentucky totaling 17,765 linear feet of various material and width.¹ No party has sought intervention in this matter. The record in this case is complete, and the matter stands ready for a decision.

LEGAL STANDARD

The Commission's standard of review of a request for a CPCN is well settled. No utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission except as provided in KRS 278.020(1) and (2) and 807 KAR 5:001, Section 15(3), which are provisions not applicable to this matter. To obtain a CPCN, a utility must demonstrate the need for such facilities and an absence of wasteful duplication.²

¹ Application, Exhibit A.

² *Kentucky Utilities Co. v. Public Service Comm'n*, 252 S.W.2d 885 (Ky. 1952).

“Need” requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.³

“Wasteful Duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”⁴ To demonstrate that a proposed facility does not result in wasteful duplication, the Commission has held that the applicant must demonstrate that a thorough review of all reasonable alternative has been performed.⁵ Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁶ All relevant factors must be balanced.⁷

PROPOSED PROJECT

³ *Kentucky Utilities Co. v. Public Service Comm’n* at 890.

⁴ *Kentucky Utilities Co. v. Public Service Comm’n* at 890.

⁵ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

⁶ See *Kentucky Utilities Co. v. Public Service Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005), final Order.

⁷ Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), final Order at 6.

Breathitt District, a water district organized under KRS Chapter 274, provides retail water service to approximately 1,897 customers⁸ in Breathitt County, Kentucky.⁹

The proposed project includes the extension of waterlines composed of the installation of approximately: 150 LF of 4-inch HDPE, 400 LF of 6-inch HDPE, 300 LF of 8-inch HDPE, 4,790 LF of 2-inch PVC, 8,875 LF of 4-inch PVC, and 3,250 LF of 6-inch PVC waterlines in various areas in Breathitt County, Kentucky.¹⁰ Breathitt District states that much of the installation will be constructed by trenching the earth, and directionally drilled at stream locations to avoid surface disturbance.¹¹

The total cost of the proposed project, including but not limited to legal and administration, planning, engineering, construction, plus contingencies, is \$508,593.¹² Breathitt District proposes to finance the \$508,593 project cost through an ARC grant in the amount of \$750,000.¹³ According to Breathitt District, \$508,593 is the construction amount as bid and the remaining funds are for project costs such as legal fees, administrative fees, planning and engineering.¹⁴ Breathitt District states that if there are any remaining funds once these costs are paid they will be used for tank maintenance

⁸ *Annual Report of Breathitt County Water District for the Year Ended December 31, 2020* (Annual Report) at 49.

⁹ Annual Report at 12.

¹⁰ Application, Exhibit A.

¹¹ Application, Exhibit A

¹² Application, Exhibit E.

¹³ Application, Exhibit A.

¹⁴ Breathitt District's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Feb. 16, 2022), Item 2(a).

and telemetry upgrades.¹⁵ Breathitt District does not propose to increase its water service rates to its customers as a result of the proposed project.¹⁶

Breathitt District states that the installation of the water main will provide safe and reliable drinking water for the proposed project area, thereby serving public necessity.¹⁷ Breathitt District further states that the areas proposed to be served are currently unserved.¹⁸ Breathitt District states that it considered alternatives to the proposed project; to not serve the areas and continue to haul water; to phase the project into smaller projects; and to drill new wells.¹⁹ Breathitt District asserts that serving the proposed area from Breathitt District's system is the most viable alternative to provide clean and dependable water as hauling water can easily contaminate the water and wells are expensive to drill, expensive to maintain and operate, and can fail.²⁰ Breathitt District states that it expects that the construction of the proposed project will add twenty-eight houses as new customers.²¹

FINDINGS

The Commission finds that Breathitt District should be granted a CPCN for the proposed project. Breathitt District has demonstrated that the proposed construction will

¹⁵ Breathitt District's Response to Staff's Second Request, Item 2(a).

¹⁶ Application, paragraph 7.

¹⁷ Application, Exhibit A.

¹⁸ Breathitt District's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Dec. 6, 2021), Item 2.

¹⁹ Breathitt District's Response to Staff's First Request, Item 2.

²⁰ Breathitt District's Response to Staff's First Request, Item 2.

²¹ Breathitt District's Response to Staff's First Request, Item 3.

not result in wasteful duplication of existing facilities because the proposed construction will extend service to 28 houses that currently have no service and the utility considered reasonable alternatives. The Commission notes that the Kentucky Division of Water has approved the plans and specifications for the proposed project. Breathitt District demonstrated there is a need for the services that exist due to the potential customers currently either using wells or buying drinking water on their own. Finally, the Commission grants the CPCN because public convenience and necessity are served by the project, which allows Breathitt District to continue to expand adequate, reliable, and safe service to its customers.

Having reviewed the application, supporting materials, and being otherwise sufficiently advised, the Commission finds that:

1. The proposed construction will not result in wasteful duplication of existing facilities. Indeed, the proposed construction provides for the extension of the service area.
2. The proposed construction does not conflict with any existing certificates or the service of any other utility operating in the area.
3. Public convenience and necessity require the proposed construction, which allows Breathitt District to continue to expand adequate, reliable, and safe service to its customers.

IT IS THEREFORE ORDERED that:

1. Breathitt District is granted a CPCN for the proposed project as submitted.
2. Breathitt District shall obtain approval from the Commission prior to performing any additional construction not expressly authorized by this Order.

3. If surplus funds remain after the approved construction has been completed, Breathitt District may use such surplus to construct additional plant facilities if the Kentucky Infrastructure Authority approves of the use and the additional construction, and it will not result in a change in Breathitt District's rates for service. Breathitt District shall provide written notice of this additional construction in accordance with 807 KAR 5:069, Section 4.

4. Breathitt District shall file with the Commission documentation of the total costs of this project, including the cost of construction and all other capitalized costs (e.g., engineering, legal, and administrative), within 60 days of the date that construction is substantially completed. Construction costs shall be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for water utilities prescribed by the Commission.

5. Breathitt District shall file a copy of the "as-built" drawings and a certified statement from the engineer that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of substantial completion of the construction certified herein.

6. Breathitt District shall require the construction to be inspected under the general supervision of a professional engineer with a Kentucky registration in civil or mechanical engineering to ensure that the construction work is done in accordance with the contract drawings and specifications and in conformance with the best practices of the construction trades involved in the project.

7. Breathitt District shall notify the Commission in writing one week prior to the actual start of construction and at the 50 percent completion point.

8. Any documents filed in the future pursuant to ordering paragraphs 3, 4, 5, and 7 of this Order shall reference this case number and shall be retained in the utility's post-case correspondence file.

9. The Executive Director is delegated authority to grant reasonable extensions of time for filing of any documents required by this Order upon Breathitt District's showing of good cause for such extension.

10. This case is closed and removed from the Commission's docket.

Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky, or any agency thereof.

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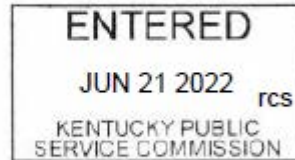
PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

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ATTEST:



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